

REMARKS

This Amendment is filed in response to the Final Office Action dated Sept 16, 2003. All objections and rejections are respectfully traversed.

Claims 1, 3-5, and 7-25 are pending in the case.

Claim Objections – 35 U.S.C. §112, First Paragraph

At paragraph 1 and 2 of the Office Action claims 24 and 25 were objected to under 35 U.S.C. 112, first paragraph as failing to comply with the written description requirement.

The MPEP, 8th Edition Rev. 1 at §2163.07(a) states “By disclosing in a patent application a device that inherently performs a function or has a property, operates according to a theory or has an advantage, a patent application necessarily discloses that function, theory or advantage, even though it says nothing explicitly concerning it.”

Applicant respectfully urges that it is inherent to the design of a switching node that executes code for a Control ATM Test Application (Fig 1, Item 22) and a Daemon ATM Test Application (Fig 1, Item 32) to have a computer readable media to store the code and a processor to execute the code.

Applicant further urges, that it is inherent to a person of ordinary skill in the art of designing switching nodes to transfer application code as electromagnetic signals across a computer network comprising nodes (Fig. 1, Items 20, 12, 14, 16, 18, 30), where the code operates on switching devices.

Claim Rejections – 35 U.S.C. §102

At paragraph 3 and 4 claims 1, 3, 5, 7, 7-10, 12-15, 17-20, 22, and 23 were rejected under 35 USC §102 as being unpatentable over Hjalmtysson et al. U.S Patent No. 6,128,305 (hereinafter Hjalmtysson).

The present invention, as set forth in representative claim 9 comprises:

A method for operating a computer, comprising:

 sending a call setup message over a computer network to a destination computer;

 receiving an acknowledgement message from the destination computer indicating that the call setup message was received, the acknowledgement message indicating that a connection through the computer network is established between the computer and the destination computer;

sending a verification data stream to the destination computer in response to receiving the acknowledgement message, the verification data stream sent over the connection;

receiving a response data stream from the destination computer, the response data stream sent over the connection; and

checking a characteristics of the connection in response to the verification data stream and the received response data stream.

Hjalmtysson discloses a method for establishing a connection in an ATM network. To setup an initial connection, a “calling station” sends a setup message (Fig. 9, SETUP) to a “called station” and the called station sends back an acknowledgement message (Fig. 9, ACK). When Q of S is desired, the calling station sends a quality of service message (Fig. 9, QoS REQUEST), the called station sends back a quality of service commit message (Fig 9, QoS COMMIT), and then the calling station sends back an acknowledgement message (Fig 9, QoS ACK).

Applicant respectfully urges that Hjalmtysson has no disclosure of Applicants’ claimed novel “*sending a verification data stream to the destination computer in response to receiving the acknowledgement message*”, “*receiving a response data stream from the destination computer, the response data stream sent over the connection*”, and “*checking a characteristics of the connection in response to the verification data stream and the received response data stream.*” Indeed, Hjalmtysson teaches a process with the shortcomings that Applicant’s claimed invention is designed to overcome. Hjalmtysson teaches only using a series of setup and acknowledge messages to establish a network connection. In the background of the Application, Applicant describes the need to test the control plain of a network device in “a real network environment” to “ensure that a data stream will actually flow” (page 2, lines 19-21, page 2, line27 to page 3, line 1).

Setup messages, such as those of Hjalmtysson, only verify that the portion of the control plane that controls setup messaging is functioning. Other portions of the control plane could be inoperative or malfunctioning. Therefore, Applicant's claimed invention teaches sending actual data streams and checking the characteristics of these actual data streams to ensure the entire control plane is functioning as desired.

Accordingly, Applicant respectfully urges that Hjalmtysson is legally precluded from anticipating the present invention under 35 U.S.C. 102 because of the absence from Hjalmtysson of Applicants' claimed novel "*sending a verification data stream to the destination computer in response to receiving the acknowledgement message*", "*receiving a response data stream from the destination computer, the response data stream sent over the connection*", and *checking a characteristics of the connection in response to the verification data stream and the received response data stream.*"

Claim Rejections – 35 U.S.C. §103

At paragraph 5 and 6 claims 4, 11, 16, and 21 were rejected under 35 USC §103 as being unpatentable over Hjalmtysson et al. U.S. Patent No. 6, 128,305 (hereinafter Hjalmtysson) in view of Examiner's official notice of a frame relay network.

Claims 4, 11, 16 and 21 are all dependant claims which depend from independent claims that include the aforementioned novel "*sending a verification data stream to the destination computer in response to receiving the acknowledgement message*", "*receiving a response data stream from the destination computer, the response data stream sent over the connection*", and *checking a characteristics of the connection in response to the verification data stream and the received response data stream.*" Therefore, Applicant respectfully urges that Hjalmtysson in light of Examiner's official notice does not anticipate the claimed invention under 35 U.S.C. 103.

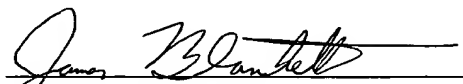
All independent claims are now believed to be in condition for allowance.

All dependant claims are believed to be dependant from allowable independent claims.

Applicant respectfully solicits favorable action.

Please charge any additional fee occasioned by this paper to our Deposit Account No. 03-1237.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "James A. Blanchette", is written over a horizontal line.

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